In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 817

WILLIAM A. BROWN, ET AL., PETITIONERS,

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW, JURISDICTION AND STATUTES INVOLVED

The opinions below, the basis for this Court's jurisdiction and the statutes involved are adequately set forth in the petition.

QUESTION PRESENTED

Whether amounts petitioners received as strike benefit payments, under the facts and circumstances of record, constitute taxable income to them within the meaning of Section 61(a) of the Internal Revenue Code of 1954.

STATEMENT

Petitioners are six airline pilots who were employed by Southern Airways, Inc. ("Southern") during

the years 1960 and 1961.[1] The certified collective bargaining representative at Southern was the Air Line Pilots Association ("ALPA"). (Pet. App. 5.) Each petitioner, with the exception of William A. Brown, was an active member of the Memphis local council 74 of ALPA. Brown was an apprentice member of that council. (Pet. App. 6.)

In 1960, Southern's pilots voted to strike the company following a dispute over work rules and wages, and the ALPA board of directors voted to pay strike benefits to them if a strike occurred; the strike began on June 5, 1960. (Pet. App. 8.)

The policy manual of ALPA provided for the payment of strike benefit assistance to all pilots (whether members, nonmembers, or apprentice members) deprived of airline income due to involvement in processing a properly authorized strike. Payment of benefits to striking pilots is contingent upon their refraining from flying for the airline involved and upon their active support of the strike effort, through performance of any duties, including picketing, which may be assigned by the local leadership. The constitution of ALPA provides that any member may be fined, suspended, or expelled, for refusing to obey such an assignment of strike duties. (Pet. App. 7.)

The chairman of the local executive council for Memphis Council 74 certified petitioners for strike benefits in advance of payment. The chairman did not require the performance by the striking pilots of any picketing or related duties, but all of such pilots, in-

[1] The female petitioners are parties only because they filed joint returns with their husbands.

cluding petitioners, were required to withhold their services from, and refrain from flying for, Southern during the strike in order to receive strike benefit payments from ALPA. (Pet. App. 8.) Many pilots, however, did perform duties in the strike effort, including picketing. (Pet. App. 9.)

ALPA imposed no requirement that strikers prove monetary need in order to receive such benefits, nor were any food vouchers distributed or personal obligations of strikers paid by ALPA. Several of the petitioners received compensation from other activities during the strike and, in accordance with the provisions of the ALPA policy manual, the strike benefits received by them were not reduced on this account. (Pet. App. 9–10.)

The strike benefit payments made by ALPA to each of the petitioners were made pursuant to an established formula based upon the recipient's preceding year's airline income. The strike benefits paid to petitioners ranged from a low of $2,415.27 to petitioner Brandon in 1960 to a high of $7,511.04 to petitioner Ferrill in 1961. (Pet. App. 11–12.) [2]

The Tax Court upheld the Commissioner's determination that the strike benefits constituted gross income within the meaning of Section 61(a) of the 1954 Code and were not excludable as gifts under Section 102(a). The court of appeals affirmed *per curiam*, concluding that the findings of the Tax Court were "supported by substantial evidence." (Pet. App. 26–27.)

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[2] Petitioners received a total of approximately $30,000 in strike benefits during the years 1960 and 1961. (Pet. App. 12.)

ARGUMENT

The issue presented was correctly decided by both courts below. There is no conflict of decisions and further review by this Court is therefore inappropriate.

1. This Court held in *United States* v. *Kaiser,* 363 U.S. 299, that whether strike benefits are to be included in taxable income or excluded as a gift under Section 102(a) is a question of fact, dependent upon whether such benefits proceed from a "detached and disinterested generosity." See *Commissioner* v. *LoBue,* 351 U.S. 243, 246. The critical inquiry in this regard is the "dominant reason" for the transfer. *Commissioner* v. *Duberstein,* 363 U.S. 278, 286. See also *Robertson* v. *United States,* 343 U.S. 711, 714. Under these decisions, considerable weight is to be given to the factfinder's conclusions in this area and appellate review of such determinations is restricted to whether the facts as found by the trial court are "clearly erroneous." *Commissioner* v. *Duberstein, supra,* 363 U.S. at 289–291. Here, the evidence amply supports the Tax Court's conclusion (Pet. App. 17) and the court of appeals' affirmance that, under the circumstances, "the benefits in question [were] not excludable from gross income as gifts." Further review of this question is unwarranted *Comstock* v. *Group of Investors,* 335 U.S. 211, 214; *Rudolph* v. *United States,* 370 U.S. 269, 271.

In *Kaiser,* a jury verdict which concluded that strike assistance by a labor union constituted non-taxable gifts was sustained. Unlike the situation in *Kaiser,* however, the benefits in the instant case were neither conditioned upon need nor paid in the form of rent and

food vouchers. While several of the petitioners received compensation from other employment in addition to strike benefits, the policy of the union in *Kaiser* was to cease giving assistance to strikers who obtained work. Accordingly, it is clear that all of the recipients in *Kaiser* needed assistance with respect to the essentials of life. As a result, this Court held that (363 U.S. 299, 304) "the jury could have concluded that assistance, rendered as it was to a class of persons in the community in economic need, proceeded primarily from generosity or charity, rather than from the incentive of anticipated economic benefit."

The record here demonstrates the correctness of the findings of both courts below that the strike benefits received by petitioners were not gifts. The reason for the payment of the substantial cash benefits at issue was not charitable in nature, but to further the objectives of ALPA, *i.e.*, to obtain anticipated economic benefits for all of its member pilots through a successful termination of the Southern strike. No recipient had to establish economic need in order to qualify for strike benefits. The amount of benefits was solely a function of the recipient's previous year's income. Moreover, a necessary requirement for receipt of the benefits was that the recipient refrain from flying Southern's airplanes. Compensation for refraining from labor is no less taxable income than compensation for services to be performed. *Salvage* v. *Commissioner*, 76 F. 2d 112 (C.A. 2), affirmed, 297 U.S. 106.[3] Although ALPA did not

[3] Petitioners' argument (Pet. 12) that they were not required to refrain from flying for Southern during the strike in order to receive benefits is at odds with the clearly stated ALPA policy. Petitioners had to strike to receive the benefits in ques-

require the particular pilots involved in this strike to picket or perform other strike duties as a condition to the payment of the strike benefits, it had the authority to impose such requirements and any pilot who refused could be denied further benefits.[4] Indeed, many of the Southern pilots did perform such duties, including the operation of a rival airline established by ALPA to compete with Southern. (Pet. App. 15.) In the light of this evidence, the finder of fact was at the least not impelled to find that the strike benefits paid to petitioners proceeded from generosity or charity within the meaning of *Kaiser*, so as to warrant treatment as excludable gifts. See also *Woody* v. *United States*, 368 F. 2d 668 (C.A. 9); *Hagar* v. *Commissioner*, 43 T.C. 468; *Halsor* v. *Lethert*, 240 F. Supp. 738 (Minn.); and *Godwin, et al.* v. *United*

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tion. Had any of the pilots flown for Southern during the strike, they would not have been "involved in processing a properly authorized strike" within the meaning of the ALPA policy manual. (Pet. App 7.)

[4] Contrary to petitioners' contentions (Pet. 11–12), the Tax Court did not make inconsistent findings on this point. While the ALPA policy manual does not expressly condition the receipt of strike benefits upon performance of strike duties, the ALPA constitution provides that failure to comply with an order of the local council, including, for example, the performance of strike duties, could result in expulsion. (Pet. App. 7.) The consequence of expulsion was a termination of benefits if assigned duties were not performed because nonmembers had to perform specific duties in order to receive benefits. (See Record Appendix to the Commissioner's Brief in the court of appeals, p. 28b.) It is these potential sanctions, rather than the lack of any explicit requirements to picket or to perform any related functions as a prerequisite to receipt of strike benefits, which are incompatible with a charitable motive. *Hagar* v. *Commissioner*, *infra*, p. 485.

States (W.D. Tenn.), decided December 15, 1964 (65–1 U.S.T.C., par. 9121), all of which hold that, under similar circumstances strike benefits constituted taxable income rather than gifts. Indeed, *Halsor* and *Godwin* involved ALPA strike benefits, and the latter case arose out of the very strike in which petitioners took part.

2. Petitioners' contention (Pet. 7–9) that the amounts they received from ALPA were not gross income in either the statutory or constitutional sense (under the Sixteenth Amendment) are contrary to the decided cases of this Court. Section 61(a) of the 1954 Code defines gross income as "all income from whatever source derived." The broad phrase "from whatever source derived" is common to both Section 61(a) and the Sixteenth Amendment and was used by Congress to exert "the full measure of its taxing power." *Helvering* v. *Clifford,* 309 U.S. 331, 334; *Helvering* v. *Midland Life Ins. Co.,* 300 U.S. 216, 223; *Douglas* v. *Willcuts,* 296 U.S. 1, 9. As this Court held in *Commissioner* v. *Glenshaw Glass Co.,* 348 U.S. 426, 431, gross income includes all "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion," a description that amply encompasses petitioners' strike benefits. See also *Gen. Investors Co.* v. *Commissioner,* 348 U.S. 434.

3. Finally, there is no merit to petitioners' argument (Pet. 8–9) that the benefits in question are analogous to a self-insurance program funded by assessments upon ALPA members, and should not be included in gross income for that reason. Even assum-

ing *arguendo* that the payments to petitioners could be deemed to have been received from individual ALPA members, rather than, as the record indicates, from ALPA itself, they would nevertheless be taxable unless Congress specifically excluded them from gross income.[5] Since no such statutory exclusion covers the strike benefits in the instant case, they must be included in petitioners' gross income.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[5] The only exclusion that Congress has seen fit to grant insurance proceeds pertains to specific types of life insurance, and accident and health insurance. See Sections 101, and 104, and 105 of the 1954 Code.

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